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RADIO/TV

Gordhan's fraud charges may be reviewed: Prosecutor

Wednesday 12 October 2016 21:50

SABC



Finance Minister Pravin Gordhan was issued with formal summons on Tuesday to appear in court to answer to fraud charges. (SABC)

Just barely a day after serving fraud charges against Finance Minister Pravin Gordhan, National Director of Public Prosecutions Shaun Abrahams says he won't hesitate to review the charges should Gordhan himself make a review application for such determination.

Following the announcement on Tuesday by Abrahams that Gordhan was being served with fraud charges and also summoned to appear in court in November, the rand dropped with high speed by more than 3%.

Again, just immediately after Abrahams's remarks before the Portfolio Committee on Justice that chances of reviewing the decision to charge the minister are very much possible, the rand recovered for the second time.

"I am more than willing to review any matter if somebody applies to me to review that matter. Now, Minister Pravin Gordhan, if he can submit submission to me with regard this matter and I will certainly look into the matter," says Abrahams.

TAGS:
National Prosecuting Authority, NPA
Pravin Gordhan, Fraud, Rand, Shaun Abrahams, Spy tapes

Fending off the barrage of questions from members of the Portfolio Committee on Justice in Parliament, Abrahams was at pains telling MPs that it was not his decision to lay charges against Gordhan and two former South African Revenue Services (SARS) officials Ivan Pillay and Oupa Magashule.

"Firstly the decision to prosecute was made on the recommendation of prosecutors by the Special Director who heads the Priority Crimes Investigation Unit in consultation with the Director of Public Prosecutions of North Gauteng. Now, the NPA Act Section 179 of the Constitution and Section 22 Sub-section 2 of the National Prosecuting Act enjoins me as the National Director to review a matter."

The NPA will consider its approach and make a decision at a later stage regarding the so-called spy tapes

Abrahams gave parliament his assurance that similar charges like that issued against the finance minister in future will be made to anyone who dares contravene the Public Finance Management Act (PFMA).

"We certainly are. And I give this committee my assurance that this is not the first, nor the last prosecution in respect of contravention of the PFMA Act."

Earlier in the day, just before Abrahams could even begin presenting the annual report, he recorded his objection for the presence of the DA MP and former NPA Senior Prosecutor Glynnis Breytenbach.

The matter was taken up to the Speaker of the National Assembly Baleka Mbete to look at it, or a possible submission of the substantive motion for future engagement between Breytenbach and the NPA while she is still under criminal investigation.

Meanwhile, the NPA will consider its approach and make a decision at a later stage regarding the so-called spy tapes.

The Constitutional Court has issued an order that it is not in the interests of justice to hear the NPA at this stage.

Abrahams says he is consulting with senior council on the matter. He says they have not yet had a chance to make a decision following the Supreme Court of Appeal's ruling that President Jacob Zuma's lawyers must argue why he should be granted leave to appeal against a High Court ruling that he should face corruption charges.

NPA chief backtracks over Gordhan charges

Abrahams says he did not take decision and is willing to review it Finance minister explores his legal options

Business Day · 13 Oct 2016 · 1 · Natasha Marrian, Genevieve Quintal and Khulekani Magubane

National Prosecuting Authority (NPA) boss Shaun Abrahams may have been too hasty in summoning Finance Minister Pravin Gordhan to court to face fraud charges.



On Tuesday, Abrahams said he was part of the collective that decided to charge Gordhan and two former South African Revenue Service (SARS) officials, Oupa Magashula and Ivan Pillay.

Hardly a day later, Abrahams took a step back in Parliament, saying he did not take the decision and that he was willing to review it.

The announcement by Abrahams that Gordhan was summoned to appear in court on November 2 on fraud charges relating to his authorisation of early retirement for Pillay, sent shock waves through the economy and raised fears of a Cabinet reshuffle.

It has also emerged that early retirement, such as Pillay's, is a common occurrence in the public service and was provided for by the Government Employees Pension Fund (GEPF).

Addressing the portfolio committee on justice and correctional services on the matter after briefing it on the NPA's annual report, Abrahams said the decision to charge Gordhan was a result of work by his team of prosecutors.

"Section 22 (2) of the NPA act enjoins me to review a matter and invite representation from the accused and complainant."

But on Tuesday, Gordhan's attorney Tebogo Malatji intimated that Abrahams had acted in bad faith for failing to allow the minister an opportunity to make representations.

He revealed that Abrahams had given a written undertaking to consider a request for the minister to make representations once a docket from the Hawks was received. However, Abrahams failed to do this and Malatji received a letter dated October 4 on Tuesday, shortly before the announcement of the summons, indicating that Gordhan was an accused person.

Gordhan said he was exploring his legal options.

There are three possible options in this regard — one is a stay of prosecution, the second is to simply face the charges and the third is to ask Abrahams to review the decision in terms of Section 179 of the Constitution.

Abrahams said this section provided that the national director of public prosecutions may intervene in the prosecution process when policy directives are not being complied with and review a decision on whether to prosecute.

ANC treasurer-general Zweli Mkhize was the first “top six” leader of the party on Tuesday to criticise the case against Gordhan, describing the charges as “not convincing” and “thin”.

“The issues that are being raised are a bit tricky in the sense that people retire and get brought back. If there was any error in that, it becomes an administrative, internal issue that the Department of Public Service and Administration generally handles,” Mkhize said, adding

EARLY RETIREMENT SUCH AS PILLAY’S IS COMMON IN THE PUBLIC SERVICE

that it was his personal view.

Gordhan will face two counts of fraud. In the first he is accused of misrepresenting to the GEPF and to SARS that Pillay was entitled to full pensionable benefits in terms of the employee-initiated severance package to the tune of R1.1m.

The minister faces another count for the extension of Pillay’s employment contract.

The GEPF on Wednesday said in terms of its rules, members could retire at any time after their 55th birthday and before they turned 60 with written permission from their employer.

“The legislation provides for an executive authority to allow for an employee to go on early retirement and concomitantly the GEPF law requires that actions taken by the employer, which places an additional financial obligation on the fund, must be made good by the employer,” the statement said.

The fund said that it played no role in the decision to approve or disapprove the early retirement of an employee. Three unions working in the public sector said it was common for employees to take early retirement if they required the money and many would then be re-employed on a contract basis.

Mkhize said, fortunately, the matter would be ventilated in court and described the Treasury as “sticklers” on the Public Finance Management Act.

It would therefore be interesting to see how the court interpreted the matter, he said.

“Certainly in a number of those instances it’s not common that an executive authority is the one who is charged, it tends to be the administration that manages a lot of those issues. So it tends to be a very nebulous process to deal with that matter.”

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URGENT

By hand
By email: skabrahams@npa.gov.za; kbenjamin@npa.gov.za
By fax: 012 843 2220

Your reference
Summons No 574/16
CAS: Brooklyn
427/05/2015

Our reference
V Movshovich / P Dela / D Cron /
D Rafferty / T Dya
3012807

Date
14 October 2016

Dear Sirs

Summons in criminal case against, *inter alios*, the Honourable Minister of Finance Mr Pravin Gordhan: Summons 574/16; CAS: Brooklyn 427/05/2015

1. We act for Freedom Under Law NPC and the Helen Suzman Foundation, non-governmental organisations concerned with, amongst other things, the promotion of the rule of law and the protection of our constitutional project ("our clients").

Senior Partners: JC Eis Managing Partner: SJ Hutton Partners: KB Africa MG Alp OA Anpófo-Antú RL Appelbaum AG Bennett OHC Booyser AR Bowley PG Bradshaw ZG Brandt JL Brink S Bruvne MS Burger RI Carrim T Cassim RS Coelho XL Culler KM Colman KE Coster X Cruzyn CR Davidow JH Davies IM Daya L du Bruyn JHB de Lange DW de Villiers BBC Dickinson MA Fremont DA Dingley G Driver HJ du Preez CP du Toit SK Eirumunson AE Esterhuizen HJR Evans AA Felek's GA Fichardt JB Faurian RL Gavith MM Gilson S7 Gilmour H Goolam CJ Gouws PD Gressly A Hatley JM Harvey MH Hathorn JS Heruiling KA Hillis XMC Hlatshwayo S Hockey CH Hofeldt PM Holloway BF Human AV Esmail KA Jarvis ME Jarvis CM Jonker S Jooste LA Kahn H Kennedy A Keyser PA Kingston C' Kok MD Kosa J Lamb L Marais S McCafferty V McParlane MC Mcintosh SJ McKenzie M McLaren SI Mehtzer SM Moshida CS Moyer AJ Mills JA Miller D Milo NP Mngomezulu J Moolana VM Moushovich M Nashall SP Naicker RA Nelson BP Ngqope A Nguba ZN Ntshona MR Ntshonko L Odenwael G22 Olivier N Pajje AMT Prudnik AS Ptery S Patel GR Penfold SE Phisoane MA Phillips HK Potgieter S Rajah D Rangellah GJ Rappaport NJA Robb DC Radman H Roder JW Scholtz KE Shepherd DMJ Simpson AJ Simpson J Simpson N Singh P Singh NP Spalding L Stelli PS Stein NY Strauli LJ Swaine Z Swanepoel A Thokar A Tsofy PZ Vanhe SE van der Meulen M van der Walt H van Dyk A van Niekerk JE Vedran D Ventur B Versteeld MG Versteeld TA Versteeld DM Visagie J Watson XL Williams K Wilson RH Wilson H Wolman Chief Operating Officers: SA Lloyd

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2. We address this letter on behalf of our clients acting in their own and in the public interest.
3. On 11 October 2016, summons no. 574/16 was served on, *inter alios*, the Honourable Minister of Finance, Mr Pravin Gordhan, MP. In terms of annexures A, B and E thereto ("the charge sheet"), the Honourable Minister is charged with:
 - 3.1 fraud, alternatively theft, in relation to the alleged payment by the South African Revenue Service ("SARS") to the Government Employees' Pension Fund ("the Fund") of R1,141,178.11 on behalf of Mr Visvanathan Pillay, where such sum was allegedly a penalty payable by Mr Pillay to the Fund (count 1 and the alternative to count 1 of the charge sheet); and
 - 3.2 fraud in relation to the re-hiring of Mr Pillay in or around April 2014 (count 4 of the charge sheet),(collectively, "the charges").
4. As prefaced in our previous correspondence, your conduct in pressing baseless charges against the Minister of Finance has, and continues to have, devastating consequences for the Republic and its economy. This is a matter of paramount public interest and our clients intend to review and set aside your decisions to institute the charges against the Minister of Finance, under the constitutional principle of legality and otherwise, unless you withdraw the decisions or furnish a cogent basis for the actions taken. It has been held in a long line of cases that our clients have standing and an interest to bring such proceedings.
5. The charges, such as they are, are unsustainable in law and fact, and may be actuated by conscious recklessness or ulterior purposes on the part of the National Prosecuting Authority ("NPA").
6. In respect of charge 1 (fraud, alternatively theft), we note the following:
 - 6.1 Mr Pillay was clearly entitled under the relevant legislation governing public servants' retirement to retire from the age of 55. This was an integral part of his employment relationship with the South African Revenue Service ("SARS").
 - 6.2 In terms of the Rules of the Government Employees Pension Fund ("GEPF"), however, a retirement before 60 years of age constitutes retirement prior to the

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pension retirement date and a penalty (by way of a deduction) would normally be applicable to the payout on such early retirement.

- 6.3 All the relevant legislation, however, provides for that penalty or deduction to be paid by SARS or the Government of the Republic of South Africa:
- 6.3.1 Rule 20 of the Rules to the Government Employees Pension Fund Law, 1996, ("GEPL") states that **"Compensation to the fund on retirement or discharge of a member prior to attainment of the member's pension retirement date. Without detracting from the generality of section 17(4) of the Law, the Government or the employer or the Government and the employer shall, if a member, except for a reason in rule 14.1.1(a), retires, becomes entitled in terms of Rule 14.8 to the pension benefits in terms of a severance package, referred to in that Rule, or is discharged prior to his or her pension retirement date and at such retirement, entitlement or discharge in terms of the rules becomes entitled to the payment of an annuity or gratuity or both an annuity and a gratuity in terms of the rules, and any of these actions result in an additional financial liability to the Fund, pay to the Fund the additional financial obligations as decided by the Board acting on the advice of the actuary. Such payment to the Fund, with interest to account for any delay in payment, shall be in accordance with a schedule approved by the Board."**
- 6.3.2 Section 17(4) of the Government Employees' Pension Fund Law, 1996, which states that: **"If any action taken by the employer or if any legislation adopted by Parliament places any additional financial obligation on the Fund, the employer or the Government or the employer and the Government, as the case may be shall pay to the Fund an amount which is required to meet such obligation";**
- 6.3.3 Government Employees Pension Fund Members' Guide, page 34, which reads **"Where the employer granted permission for your early retirement, your benefits will not be scaled down. However, your employer will pay an additional liability."**
- 6.4 In light of the above alone, the charges are unsustainable.
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- 6.5 The position is simply reinforced by the following contemporaneous documentation related to the retirement of Mr Pillay:
- 6.5.1 The Interoffice memorandum dated 27 November 2009 from Mr Pillay to the then Commissioner of SARS (annexed marked "A");
- 6.5.2 The Legal and Policy Division memorandum dated 17 March 2009 (annexed marked "B");
- 6.5.3 The memorandum dated 12 August 2010, and approved by the Minister on 18 October 2010 referred to in count 1 (annexed marked "C").
- 6.6 The above correspondence not only references the relevant legislation, but also:
- 6.6.1 sets out cogent reasons for Mr Pillay's circumstances; and
- 6.6.2 cites the fact that over 3000 government employees have taken early retirement with full benefits.
- 6.7 It is plain from the legislation that the retirement of Mr Pillay did not require the Minister's approval at all. SARS and the government would be liable to pay any early retirement penalty. But to the extent that the Minister gave his approval, it was clearly in line not only with a raft of legislation but also ample precedent.
- 6.8 The allegation that the NPA could ever prove fraud or theft in those circumstances in relation to the payment of the penalty is preposterous.
7. In respect of charge 4 (fraud), we note the following:
- 7.1 The charge is inchoate and incomprehensible.
- 7.2 It is initially alleged that SARS was not authorised to employ Mr Pillay as Deputy Commissioner for a period of four years from 1 April 2014 to 31 December 2018. The alleged issue is thus authority. There is nothing in law or fact, however, which states that SARS was not empowered to hire Mr Pillay as Deputy Commissioner for this period.
- 7.3 Under the relevant legislation, SARS is, in fact, empowered to employ its Deputy Commissioner. Section 5(1)(a) of the SARS Act empowers SARS to "determine its
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own staff establishment, appoint employees and determine their terms and conditions of employment in accordance with section 18".

- 7.4 In respect of senior management SARS employees, the Minister of Finance is statutorily charged with approving the terms and conditions of their employment (under section 18(3) of the SARS Act).
- 7.5 That is precisely what happened in this case. SARS appointed Mr Pillay and the Minister of Finance approved his terms and conditions. The employment agreement is attached marked "D".
- 7.6 Thus the alleged representation (if it occurred at all) is correct in law and is in no way unlawful.
- 7.7 There is also no basis for the alleged prejudice. Mr Pillay, with a proven track record and years of exemplary service to SARS, would be rendering services as the Deputy Commissioner for the amounts which would be paid to him under the employment agreement. In any event, Mr Pillay's employment with SARS could be cancelled on one month's written notice - accordingly, if SARS ever felt aggrieved or prejudiced by Mr Pillay's employment, this could have been remedied on one month's notice.
- 7.8 The fraudulent intention is allegedly grounded in the fact that the Minister of Finance knew that SARS was under no obligation to enter into a new employment agreement. But the alleged misrepresentation is that the Minister of Finance stated that SARS was empowered (not obliged) to hire Mr Pillay, and so this intention is irrelevant to the alleged fraudulent conduct.
- 7.9 Ultimately, the charge of fraud is nonsensical, is bad in fact and law, and cannot be sustained.
8. In respect of both charges, even if it is assumed (contrary to the dispositive analysis above) that the conduct of the Minister of Finance was not strictly in accordance with the law, there is no basis for imputing a fraudulent or furtive intention to him and none has been suggested.
9. Indeed, in previous correspondence from the Directorate for Priority Crime Investigation, it has never been alleged that Minister Gordhan committed fraud or theft. Rather, the

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allegations were breaches of the Prevention and Combating of Corrupt Activities Act, 2004, Public Finance Management Act, 1999 and National Strategic Intelligence Act, 1994.

10. In light of the above, please confirm, in writing and by no later than 16:00, 21 October 2016, that the charges against Minister Gordhan will be withdrawn.
11. Should you refuse or fail to withdraw the charges as set forth above, then, for the purposes of assessing their position and the breaches of your constitutional and statutory obligations, our clients require you to furnish the following information and reasons, by no later than 16:00, 21 October 2016:
 - 11.1 the record of decision in respect of the decision to issue the summons and prefer the charges against Minister Gordhan ("the Decisions");
 - 11.2 full written reasons, and substantiating documents, which support the Decisions;
 - 11.3 without derogating from the above, all reasons explaining why, despite the factual matrix in relation to the charges being known (and being in the public realm) for many years, the Decisions were taken now;
 - 11.4 without derogating from the above, the evidence (alternatively a summary thereof) proving:
 - 11.4.1 the unlawful intention required successfully to prosecute the charges;
 - 11.4.2 that Minister Gordhan made any misrepresentation as required for the purposes of establishing fraud and that such misrepresentation induced the persons cited in counts 1 and 4 of the charge sheet to act to their prejudice;
 - 11.4.3 the act of appropriation (or *contrectatio*) attributed to Minister Gordhan in respect of the alternative charge of theft.
 - 11.5 whether any other instances of State employees taking early retirement with full pension (without any penalty payment being paid by the employee) are / have been investigated and are being considered for criminal prosecution on the basis of fraud or theft;

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- 11.6 whether any other instances of State employees being hired after taking early retirement are / have been investigated and are being considered for criminal prosecution on the basis of fraud;
- 11.7 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement with full pension (and no penalty payment by such employee); and
- 11.8 a list of all cases which have been or are being criminally prosecuted, or are being considered for criminal prosecution, which relate to State employees taking early retirement and being rehired.
12. Should you not unconditionally withdraw the charges against the Minister or furnish the information sought within the time periods set forth above, our clients will assume that no reasons for the Decisions, and no documents other than the documents annexed to this letter, exist in support of the charges.
13. Our clients may then, without further notice, seek to exercise their rights in law on an urgent basis.

Yours faithfully

**WEBBER WENTZEL****V Movshovich**

Direct tel: +27 11 530 5867

Direct fax: +27 11 530 6867

Email: vlad.movshovich@webberwentzel.com



CONFIDENTIAL

Internal Memorandum**"A"**

Dear Oupa

PURPOSE

The purpose of this memorandum is to explain that I have decided to take early retirement as well as to request you to consider to recommend for possible approval by the Minister certain related matters that will flow from my decision to take early retirement.

DISCUSSION

As you know, I have been working in the Public Sector for the past 15 years, 10 years which have been spent with SARS. For the most part of this period, especially my tenure with SARS, I was expected to perform at a very high level accompanied by the accountabilities that go with the performance of such a high level job. This exacted its toll from me in the sense that my health condition is slowly deteriorating. Added to this, my family responsibilities, for a long time, suffered on account of the dedication required by my job. With the aforementioned in mind, although still not easy, I have decided to take early retirement.

However, I am still enthusiastic about SARS and the tremendous contribution it makes towards the establishment of an even better South Africa for all its citizens. With a view thereto, I am willing to serve in SARS in a different capacity where the demands of such a job will positively support the reasons why I am in the first instance taking early retirement.

Should you favorably consider my proposal to serve SARS in a different capacity, such service will have to be subject to that I be appointed as a contract employee. This will allow me more flexibility in terms of making a decision to finally part ways with SARS, should I come to such a decision. The second condition will be that my early retirement is approved in terms of the provisions of section 16(6)(a) and (b) of the Public Service Act, meaning that the Minister, in terms of the provisions of the aforementioned section approve that the penalty imposed on my pension benefits per Rule 14.3.3 (b) of the GEPP Rules, be paid by SARS to the GEPP. The GEPP has indicated that the penalty amount on my pension benefits that the employer has to pay on my behalf is R1 292 732,68.

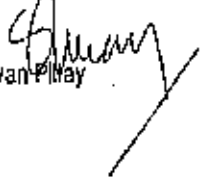


RECOMMENDATION

My recommendations are that you please:

- Take note that I intend to take early retirement
- Consider to approve that I be reappointed in a different capacity in SARS on a contract basis; and
- Consider to recommend to the Minister that he approves that the penalty on my pension benefits be paid on my behalf to the GEPP by the employer.

Regards


Ivan Pillay

27/11/2009





Memorandum	South African Revenue Service Suid-Afrikaanse Inkometediens Uphlko lwazi mali Ezingonayo eNingizimu Afrika Tirelamatlolo ya Afrika-Borwa
	Pretoria Head Office 209 Bronkhorst Street, Nieuw Muckleneuk, 0181 P O Box 402, Pretoria, 0001 Telephone (012) 422-4000 E-mail: vsymington@sars.gov.za

TO	COMMISSIONER		
FROM	Vlok Symington	TEL	• (012) 422-4929
2009 March 17	2009 March 17	FAX	• (012) 422-4952
SUBJECT	EARLY RETIREMENT: MR IVAN PILLAY		

Dear Commissioner,

Background

Mr Ivan Pillay requested me to consider certain elements that form part of his decision to apply for early retirement from the Government Employees Pension Fund (the GEPF).

These elements are:

1. His application for early retirement from the GEPF;
2. His application to the Minister of Finance to waive the early retirement penalty; and
3. His request to be appointed on contract after his early retirement from the GEPF.

The technical position

Approached individually, all three elements are technically possible under the rules of the GEPF read together with the employment policies of SARS. Mr Pillay has reached the required age for early retirement, he is entitled to request the Minister to "waive" the early retirement penalty, and no technicality prevents SARS from appointing him on a contract after his retirement from the GEPF.

Financial risk

I am not a registered financial advisor and my views in this document is therefore not intended to be financial advice and should not be construed as such.

Mr Pillay opted for the early retirement package to be paid in the form of a monthly pension and a once-off gratuity. Because of the current global financial turmoil and his personal adversity to risk his choice in favour of a pension and gratuity split is prudent.

However, the financial soundness of his decision to apply for early retirement is dependent on whether the Minister approves the SARS payment of the benefit penalty to the GEPF as well as whether SARS contracts with him for a period of post-retirement employment. This is so because of the relatively young age at which he will be retiring vis-à-vis his projected life expectancy. If the Minister does not approve his request or if SARS does not contract with him after his retirement, the financial risk of his decision will increase substantially and my advice then would be for him to review his application for early retirement and to possibly withdraw it.

Summary

Mr Pillay's application for early retirement should be considered together with his application for the Minister to approve the benefit penalty payment by SARS as well as his request for post retirement contract employment at SARS. If his application is approved as a package the financial risks in the context of his circumstances are probably minimal. However, if the Minister is unable to approve his request relating to the penalty or if SARS is not in a position to contract with him after retirement, then his decision to apply for early retirement should probably altogether be withdrawn.

Kind regards

Vlok Symington



"C" AB

Office of the
Commissioner



South African Revenue Service

Office
Pretoria

Mr PJ GORDHAN
Minister of Finance

Enquiries
Tania Kirby

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299 Bronkhorst Street,
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SARS online: www.sars.gov.za
Telephone (012) 422 4000

Telephone
(012) 422 5100

Facsimile
(012) 422 5109

Room
Block A2

Reference

Date
12 August 2010

Dear Minister

**EARLY RETIREMENT OF DEPUTY COMMISSIONER IVAN PILLAY WITH
FULL RETIREMENT BENEFITS**

1. PURPOSE

The purpose of this memorandum is to request approval from the Minister for the early retirement of Deputy Commissioner Ivan Pillay with full retirement benefits from the GEPF as contemplated in Rule 14 3.3(b) of the Government Employees Pension Law, 1996, read with section 19 of the SARS Act and section 16(2A)(a) of the Public Service Act, 1994, as amended, with effect from 1 September 2010.

In addition, approval is requested to retain Mr Pillay as Deputy Commissioner of SARS on a three year contract with effect from 1 September 2010.

2. BACKGROUND

Ivan joined the Public Service in January 1995 and has been in the employ of SARS for more than 10 years. For the majority of this period especially during his tenure in SARS, he has held a very senior position with the accompanying accountabilities that go with such a high level job.

Ivan has always excelled at his job and made a significant contribution towards the establishment of SARS as the highly respected organisation it is today.

For personal reasons, he has requested to take early retirement with effect from 1 September 2010. He is currently 56 years old.

Given Ivan's critical skills, experience and leadership, he has agreed to remain in the employ of SARS as Deputy Commissioner after his retirement on a three year contract to assist with the on-going leadership transition.

3. MOTIVATION FOR RETIREMENT WITH FULL BENEFITS

In the light of Ivan's exemplary service and sacrifice in the service of the people of South Africa, it is requested that he be granted early retirement with full retirement benefits as provided for in section 19 of the SARS Act, 1997, read with section 16(2A)(a) of the Public Service Act, 1994.

Over the past 5 years the GEPF has approved over 3000 requests from various government departments for staff members to retire before the age of 60 with full benefits. The statistics are attached to this memorandum as received from the GEPF (Appendix A)

In addition, the former and current Minister of Finance have approved at least five such requests over the past two years (see Appendix B).

4. MOTIVATION FOR REAPPOINTMENT ON A THREE YEAR CONTRACT

Ivan's wealth of knowledge and experience within SARS and his leadership position as Deputy Commissioner is an invaluable asset to the organisation. This is particularly important given the on-going leadership transition within the organisation following the departure of the Minister and the recent restructuring of the top leadership of the organisation as part of the revised Operating Model

Ivan's continued guidance, leadership and knowledge over the next three years will provide critical continuity as well as playing an important mentoring role in developing the next generation of SARS leaders.

In addition, it should be noted that there is precedent for the termination of employment and immediate rehiring of the same person under different conditions of employment within the public sector.

In this regard, advice was sought from the Acting Director-General of the Department of Public Service and Administration (DPSA) Mr. Kenny Govender regarding the proposed early retirement of Mr Pillay and his retention on a three year contract. He confirmed that there is no restriction on the appointment to the public service or to the same department of a person who has left on an Employee Initiated Severance Package (EISP) and that he was aware of previous such cases.

5. FINANCIAL IMPLICATIONS

The financial implications of early retirement with downscaled benefits for Ivan will be considerable as his lump sum benefit will decrease by R243 605 to R2 121 443 and his monthly pension by R4 740 to R48 563.

The financial implications for SARS, should approval be granted to allow Ivan to take early retirement with full retirement benefits, will be an amount of R1 258 345.99 which SARS will be liable to pay the GEPP in terms of the provisions of section 17 (4) of the GEPP Law, 1996.

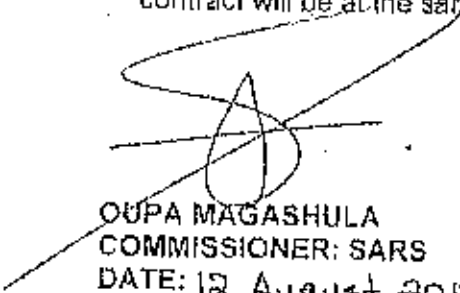
Should the Minister approve this submission, the authorisation and allocation for this payment will follow the normal governance process within SARS including engagement with the SARS Human Resources Committee and the SARS EXCO.

[Note: The above figures reflect the costs as at 1 August 2010. These costs reduce each month which elapses.]

6. RECOMMENDATION

It is recommended that the Minister approve Mr Pillay's early retirement from SARS with effect from 1 August 2010 without downscaling of his retirement/pension benefits as provided for in GEPP Rule 14.3.3 as well as section 19 of the SARS Act, 1997, as amended, read with section 16(2)(a) of the Public Service Act, 1994, as amended.

In addition it is recommended that the Minister approve the retention of Mr Pillay as Deputy Commissioner of SARS on a three year contract with effect from 1 August 2010. The remuneration of Mr Pillay in terms of the contract will be at the same cost to company as his current package.




OUPA MAGASHULA
COMMISSIONER: SARS
DATE: 12 August 2010

RECOMMENDED/NOT RECOMMENDED

N NENE
DEPUTY MINISTER OF FINANCE
DATE:

APPROVED/NOT APPROVED/NOTED:



PJ GORDHAN
MINISTER OF FINANCE
DATE: 13 October 2010



"D" A 8



FIXED TERM EMPLOYMENT CONTRACT

entered into between:

THE SOUTH AFRICAN REVENUE SERVICE
(*the Employer*)

and

Visvanathan Pillay
Identity number: 6304185734085
(*the Employee*)

1. APPOINTMENT

1.1 The Employer employs the Employee and the Employee accepts the appointment and shall render services to the Employer in the capacity set out in Employee's offer of employment, or any other similar capacity required by the Employer from time to time.

2. DURATION

2.1 The Employee's employment with the Employer is for a fixed term period.

2.2 This fixed term contract of employment shall commence on 01 April 2014 (*the Commencement Date*) and shall continue until 31 December 2018 (*the Termination Date*) and shall terminate on completion of the aforesaid period by the effluxion of time.

2.3 In the event that the duration of this contract of employment between the Employer and Employee is linked to the performance and/or completion of a particular task or project, the task or the project concerned will be clearly specified and identified in the Employee's offer of appointment.

Employee Witness 1
Employee Witness 2

Employer Witness 1
Employer Witness 2

Employee
Employer

Misvanathan Pillay

which forms part of this contract.

2.4 On the Termination Date this contract and the Employee's employment will expire automatically through the effluxion of time. It is specifically agreed that as termination of this contract of employment is through the effluxion of time, the termination will not constitute a dismissal in terms of the Labour Relations Act, 1995.

2.5 It is specifically agreed and recorded that on the termination of the Employee's employment s/he will have no expectation of continued employment with the Employer and no expectation of being engaged on a further fixed term contract either on the same or similar terms or on less favourable terms.

2.6 Operational requirements may necessitate a reduction of staff levels prior to the effluxion of the fixed term and the Employer reserves the right to act accordingly.

3. FUNCTIONS AND DUTIES OF EMPLOYEE

3.1 The Employee will perform functions and duties in a professional manner and to the best of his/her ability as set out in the job profile contained in offer of employment. Any change in the job profile will be set out in a letter which will replace the Employee's offer of employment.

3.2 In addition to the functions and duties contained in the role profile, the Employee will;

3.2.1 perform such duties as the Employer or its duly authorised representative may from time to time assign to him or her;

3.2.2 perform his or her duties in a timely, professional and responsible manner as the Employer or other authorised representative of the

Employee Witness 1
Employee Witness 2



Employer Witness 1
Employer Witness 2



Employee
Employer


Visvanathan Pillay

Employer may direct from time to time:

- 3.2.3 in the discharge of his or her duties, observe and comply with all resolutions, directives, rules, orders, policies and procedures as the Employer may give from time to time;
- 3.2.4 devote all his or her time and attention to his or her duties under this agreement during normal working hours;
- 3.2.5 not communicate, publish or distribute to any person outside the Employer's employ, either during the continuance of his or her employment under this agreement or thereafter, any official documents, reviews, research results, articles and/or publications whether produced by the Employee or not, without the prior written permission of the Employer or other duly authorised representative of the Employer;
- 3.2.6 at such intervals as the Employer may direct, report fully on the results obtained and knowledge acquired by him/her in any research work done by him/her both during and outside working hours;
- 3.2.7 use his or her best endeavours to properly conduct, improve, extend, promote, protect and preserve the interests and reputation of the Employer;
- 3.2.8 not engage in activities that would detract from the proper performance of his or her functions and duties.
- 3.2.9 comply with all the laws of the Republic of South Africa.
- 3.2.10 undertakes to inform the Employer forthwith of any substantive criminal or civil proceedings which may be instituted against him or

Employee Witness 1 
Employee Witness 2 

Employer Witness 1 
Employer Witness 2 

Employee 
Employer



Visvanathan Pillay

her and the nature thereof.

3.3 The Employer may, after consulting with the Employee, change or amend the Employee's duties and responsibilities from time to time in accordance with the Employer's operational requirements.

4. REMUNERATION

4.1 The Employee will be paid an all-inclusive remuneration.

4.2 The Employee agrees that his/her remuneration package will be reviewed annually in line with the Employer's Pay policy and procedures, as applicable from time to time and copies of which are available to the Employee from the HR department. A key element of this review will be the measurement of the Employee's performance against the standards of performance agreed to with the Employer represented by the Employee's line manager. The Employee will be advised of any increase to his/her remuneration package by means of a letter.

4.3 The Employee is excluded from the Government Employees' Pension Fund Membership in accordance with section 5 (d) of the Government Employees' Pension Law, 1996 (Proclamation 21 of 1996).

4.4 The Employer and the Employee may, by agreement, structure an all-inclusive remuneration package to allow for a medical aid allowance and a car allowance according to the Employer's rules and guidelines as applicable. In the event that the Employee structures a medical aid allowance into his/her package, the Employee may only belong to one of the Employer's accredited medical aid schemes selected from time to time and the Employer will only process the Employee's contributions to such accredited medical aid schemes on behalf of the Employee and at the Employee's request, monthly in arrears, the cost of which shall form part of the Employee's remuneration package reflected in the Offer of employment.

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee [Signature]
Employer [Signature]

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Visvanathan Pillay

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4.5 The Employee will receive his/her remuneration in twelve equal monthly payments on the 15th of every month. Should the 15th fall on a weekend or public holiday the Employee will be paid on the day immediately preceding such weekend or public holiday.

4.6 The Employer does not provide any post-retirement medical aid benefits.

5. PERFORMANCE MANAGEMENT

5.1 The Employee's performance contract will be agreed to with a person appointed by the Minister. Copies of the performance management policy are available from the HR department and the employee is expected to familiarise him/herself with it.

6. PERFORMANCE BONUS

6.1 The terms and conditions of the Employee's participation on the above scheme are set out in more detail on the Employer's Performance Management and/or Incentive Scheme Policies, if applicable from time to time to the Employee, who agrees to access such policies, from the HR department.

7. WORKING HOURS AND OVERTIME

7.1 The Employee's ordinary hours of work are 9 hours per day, inclusive of a 60 minute meal interval. However the Employee will be required to work such additional time as is necessary to properly perform all the functions of the job.

7.2 Overtime is paid only to those employees who are entitled to overtime in terms of the Overtime policy and in accordance with the policy.

Employee Witness 1
Employee Witness 2

Employer Witness 1
Employer Witness 2

Employee
Employer

8. LEAVE

8.1 All leave is regulated by the Employer's Leave Policy, applicable from time to time, a copy of which is available from the HR department.

9. CONFIDENTIALITY

9.1 The Employee agrees not to divulge or discuss his or her remuneration package with colleagues, as the Employer regards such matter as confidential.

9.2 The Employee shall not, either during the term of this agreement or thereafter, use any Employer related information including third party information, for his or her own benefit or otherwise to the detriment or prejudice of the Employer, except in the proper course of his or her duties, divulge to any person any trade secret or any other confidential information concerning the business or affairs of the Employer which may come to the Employee's knowledge during his or her employment.

9.3 In particular, the Employee shall not at any time during or after termination of his or her employment, reveal to any person, firm or corporation, any of the trade secrets, technical know-how and data, drawings, systems, methods, software, processes, lists, programs, marketing and/or financial information, confidential information, or any information concerning the organisation, functions, transactions or affairs of the Employer, and shall not use or attempt to use any such information in any manner which may injure or cause loss either directly or indirectly to the Employer or may be liable to do so.

9.4 The Employee agrees to sign and execute the Employer's Oath of Secrecy as a precondition to this contract of employment. Failure by the Employee to execute the said Oath will render this agreement null and void

Employee Witness 1 *[Signature]*
Employee Witness 2 *[Signature]*

Employer Witness 1 *[Signature]*
Employer Witness *[Signature]*

Employee
Employer

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Visvanathan Pillay



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

10. EMPLOYER RESOURCES

- 10.1 The Employee acknowledges and accepts that the Employee's resources, including but not limited to servers, computers, printers, telefax machines, telephones/fixed lines, mobile phones, postal services, e-mail facilities and internet facilities ("the resources") are for conducting the Employer's business.
- 10.2 The Employee shall have no expectation of privacy in relation to the use of the resources provided by the Employer.
- 10.3 The Employee understands and accepts that the Employer may, at its discretion, monitor the Employee's use of the resources and intercept, acquire, read, view, inspect, record and/or review any and all communications created, stored, transmitted, spoken, sent, received or communicated by the Employee on, over or in the resources or otherwise. The Employee hereby consents to the Employer doing so.
- 10.4 The Employee shall not remove, or cause to be removed by any means including electronic transfer from any of the Employer's premises, any documents, data, material, equipment or property without the written consent of the Employer.

11. SECURITY

- 11.1 The Employee agrees to submit his/her personal belongings and office or workstation to a search by any person designated by the Employer whenever the Employer deems it necessary and reasonable.

Employee Witness 1 
Employee Witness 2 

Employer Witness 1 
Employer Witness 2 

Employee 
Employer 

12. EMPLOYER PROPERTY

12.1 All catalogues, correspondence, letters, memoranda, note books, order books, documents, papers, goods, samples, equipment and any other articles of any kind whatsoever that may be made available to or come into the possession of the Employee during the period of his employment under this agreement, shall belong to and remain the property of the Employer, both during the Employee's employment and after termination of his employment, at which time the Employee shall deliver to the Employer all such items in his or her possession with the assurance that no such articles remain in his or her possession.

12.2 Upon the termination of the Employee's employment, s/he must return to the Employer all property, of whatsoever nature, in his or her possession which belongs to the Employer.

12.3 In addition, the Employee must return to the Employer all other material containing information relating to the affairs of the Employer, regardless of whether or not such material was originally supplied by the Employer to the Employee, including but not limited to: records, discs, accounts, letters, notes or memoranda.

13. INTELLECTUAL PROPERTY

13.1 Intellectual property rights include, but are not limited to, trademarks, service marks, trade names, domain names, designs, patents, petty patents, utility models and like rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing, copyright (including, without limitation, rights in computer software and data bases, and moral rights), rights in inventions, designs, know-how, confidential information, trade secrets, other intellectual property rights and all rights or forms of protection having equivalent or

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee [Signature]
Employer [Signature]

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Visvanathan Pillay

similar effect to any of the foregoing which may subsist in any country in the world.

13.2 Any intellectual property rights of whatsoever nature arising out of the performance by the Employee of his obligations in terms hereof are, to the extent that they do not vest automatically in the Employer, hereby irrevocably ceded and assigned in perpetuity to the Employer, it being further recorded that the Employer shall be entitled to cede and assign all such rights to any other person without limitation.

13.3 The Employer and/or such other person, as the case may be, shall be entitled to dispose of any and all intellectual property rights in their sole discretion, anywhere in the world, without the payment of any additional consideration to the Employee.

13.4 The Employee undertakes to sign all documents and to do all things necessary, at the cost of the Employer, to obtain or to record such intellectual property rights at any intellectual property rights registry in the world.

14. TERMINATION OF EMPLOYMENT

14.1 This fixed term contract of employment shall terminate on the Termination Date by the effluxion of time.

14.2 Notwithstanding 14.1 above, either party may terminate this contract by giving the other party one (1) month's written notice of termination.

14.3 The Employer may also terminate this contract by paying the Employee the amount of salary s/he would have received during the required period of notice in lieu of giving him that period of notice.

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employer
Employer [Signature]

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14.4 If the Employee is incapable of performing his/her duties under this contract because of mental or physical illness or injury, the Employer may terminate his/her employment for Incapacity. To assist the Employer in deciding whether to terminate employment on these grounds the Employer may require the Employee to undergo (at the Employer's expense) a medical examination by a registered medical practitioner. The Employer may rely on any report or recommendations made available to the Employer as a result of that examination, along with any other relevant medical reports or recommendations received.

14.5 Nothing in this contract prevents the Employer from exercising its right to dismiss the Employee without notice at any stage for misconduct, incapacity, poor performance or the operational requirements of the Employer, or for any other reason justified in law and in accordance with the Employer's Disciplinary Code and Procedure.

14.6 On termination of employment, the Employee must return all the equipment and property of the Employer in a satisfactory condition before his final remuneration shall be paid.

15. **CONFLICT OF INTEREST**

15.1 Employee is required to ensure at all times that s/he does not put him/herself in a situation where their own personal interests conflict or may potentially conflict with the interest of the Employer.

15.2 Conflicts of Interest are regulated by the Employer's Declaration of Private Interests Policy applicable from time to time, a copy of which is available from the HR department.

Employee Witness 1 *[Signature]*
Employee Witness 2 *[Signature]*

Employer Witness 1 *[Signature]*
Employer Witness 2 *[Signature]*

Employee
Employer

[Large handwritten signature]

16. EMPLOYER'S POLICIES AND PROCEDURES

16.1 All the Employer's policies and procedures as applicable from time to time form part of the terms and conditions of employment. The Employee undertakes and agrees that on signing this agreement, he or she will abide by such policies.

16.2 The Employee further agrees and undertakes to comply with Employer's policies, rules, regulations and procedures applicable from time to time. Copies of the Employer's policies and procedures are available from the HR department. It is the Employee's responsibility to familiarise himself/herself therewith.

16.3 Transgression or non-compliance with any of the provisions of Employer's policies and procedures may result in disciplinary action being taken against the Employee which may result in termination of the Employee's employment relationship with the Employer.

16.4 The Employer reserves the right to amend its policies at its discretion, from time to time.

17. GENERAL

17.1 Nothing in this agreement shall be deemed to constitute a partnership between the parties or constitute any party the agent of any other party for any purpose.

17.2 This document contains the entire agreement between the parties with regard to the matter dealt with herein and no representations, terms, conditions or warranties not contained in this agreement shall be binding on any of the parties.

Employee Witness 1
Employee Witness 2

Employer Witness 1
Employer Witness 2

Employee
Employer

Visvanathan Pillay

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- 17.3 No latitude, relaxation, indulgence or extension of time which may be allowed to the Contractor or any of its employees by SARS in respect of any performance or breach or any other matter in terms of this contract shall in any circumstances be deemed a waiver by SARS of its rights.
- 17.4 No variation, addition to or cancellation of this agreement and no waiver of any right in terms of this agreement shall be of any force and effect unless reduced to writing and signed by or on behalf of both parties to this agreement.
- 17.5 An expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa.
- 17.6 This agreement shall, for all purposes, be construed and governed by the laws of the Republic of South Africa.
- 17.7 Any matter arising from this agreement, which is not specifically provided for herein, shall be dealt with in accordance with the provisions of the South African Revenue Service Act of 1997.

Employee Witness 1
Employee Witness 2

Employer Witness 1
Employer Witness 2

Employee
Employer

Visvanathan Pillay

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SIGNED BY THE EMPLOYER AT _____ ON THIS THE ____ DAY OF _____ 2014.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]

For and on behalf of:
The Employer, duly authorised

SIGNED BY THE EMPLOYEE AT PRETORIA ON THIS THE DAY OF 26 MARCH 2014.

AS WITNESSES:

1. [Signature]
2. [Signature]

[Signature]
The Employee

Employee Witness 1 [Signature]
Employee Witness 2 [Signature]

Employer Witness 1 [Signature]
Employer Witness 2 [Signature]

Employee
Employer

[Large Signature]

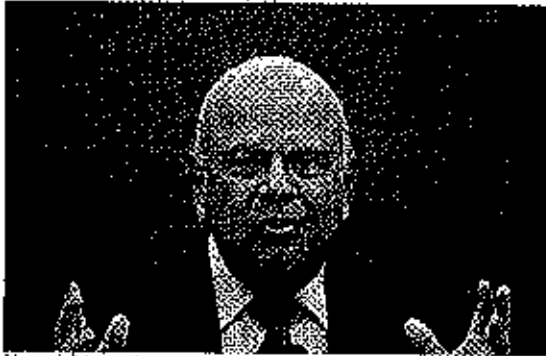
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'Shaun Abrahams won't give me a fair hearing' - Pravin Gordhan

17 Oct 2016 10:00 AM

Oct 14, 2016 | TMG Digital

Finance Minister Pravin Gordhan does not have any confidence in the National Director of Public Prosecutions's ability or willingness to afford him a fair hearing.



South African Finance Minister Pravin Gordhan. File photo.

Photograph by: Siphwe Sibeko

Finance Minister Pravin Gordhan does not have any confidence in the National Director of Public Prosecutions's ability or willingness to afford him a fair hearing. This is according to his lawyer Tebogo Malatji.

This is according to his lawyer Tebogo Malatji.

- **Corruption buster Willie Hofmeyr aligns himself with Gordhan**

<http://www.timeslive.co.za/politics/2016/10/14/Corruption-buster-Willie-Hofmeyr-aligns-himself-with-Gordhan>

National Director of Public Prosecutions Shaun Abrahams announced on Tuesday that Gordhan, former SARS commissioner Oupa Magashula and former deputy commissioner of SARS Ivan Pillay will be charged with fraud.

- **NPA faces legal challenge over Gordhan charges** (<http://www.timeslive.co.za/politics/2016/10/14/NPA-faces-legal-challenge-over-Gordhan-charges>)

The charges relate to Pillay's early retirement from SARS and of entering into a new employment contract with Pillay for a period of four years from April 1 2014 and terminating on December 31 2018. Gordhan is due to appear in court early next month.

Abrahams told the Parliamentary Portfolio Committee on Justice and Correctional Services on Wednesday that Gordhan is welcome to approach him to make representations regarding the charges that have been preferred against him.

Rejecting this, Gordhan's lawyer said in a statement on Friday: "Minister Gordhan has taken legal advice on the matter and decided not to make representations to the NDPP."

"The main reason for his decision is that he does not have any confidence in the NDPP's ability or willingness to afford him a fair hearing.

"First, we repeatedly asked the NPA to afford the Minister an opportunity to make representations to them before they decided whether to prosecute the Minister but they spurned our requests.

"Second, the NDPP's conduct at his press conference announcing the decision to charge the Minister made clear his commitment to the prosecution.

"Third, having now had an opportunity to study the charges against the Minister, it is also clear to us that they manifest a resolute and not well founded determination to prosecute the Minister at all costs. Any representations to the NDPP would accordingly be pointless."

"Minister Pravin Gordhan continues to take legal counsel in regard to ways and means to bring the matter to an expedited finality."

Malatji said eminent lawyer Advocate Wim Tregrove SC as well as advocates Hamilton Maenetje SC and Ziyaad Navsa will be assisting the minister's defence team.

~ o o o ~